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FISCAL IMPACT STATEMENT

LS 7498 **NOTE PREPARED:** Apr 14, 2009
BILL NUMBER: SB 448 **BILL AMENDED:** Apr 14, 2009

SUBJECT: State and Local Administration.

FIRST AUTHOR: Sen. Charbonneau **BILL STATUS:** 2nd Reading - 2nd House
FIRST SPONSOR: Rep. Austin

FUNDS AFFECTED: X GENERAL **IMPACT:** State & Local
X DEDICATED
FEDERAL

Summary of Legislation: (Amended) *Enterprise IT Exemption:* This bill provides that enterprise information technology equipment purchased after June 30, 2009, by an eligible business is exempt from personal property taxation for a period agreed to by a designating body (a county council or municipal fiscal body). The bill provides that before January 1, 2013, a designating body may adopt a resolution providing the exemption to a particular business. It requires that the designating body and the eligible business enter into an agreement concerning the property tax exemption, which must specify the duration of the property tax exemption and may specify that a transferee is entitled to the exemption on the same terms as the transferor. The bill specifies that the exemption continues for the period specified in the agreement, notwithstanding the January 1, 2013, deadline to adopt a resolution granting an exemption.

The bill defines enterprise information technology equipment as:

(1) Hardware supporting computing, networking, or data storage function, including servers and routers;

(2) Networking systems having an industry designation as equipment within the "enterprise" or "data center" class of networking systems that support the computing, networking, or data storage functions; and

(3) Generators and other equipment used to ensure an uninterrupted power supply to such hardware and networking systems. It provides that enterprise information technology equipment does not include computer hardware designed for single user, workstation, or departmental level use.

The bill also defines an eligible business to be an entity that meets the following requirements:

(1) The entity is engaged in a business that operates one or more facilities dedicated to computing, networking, or data storage activities;

(2) The entity is located in a facility or data center in Indiana;
(3) The entity invests in the aggregate at least $10 M in personal property and real property in Indiana after June 30, 2009; and
(4) The average employee wage of the entity is at least 125% of the county average wage for each county in which the entity conducts business operations.

Aircraft Sales Tax Exemption: This bill provides exemptions of aircraft from gross retail and use taxes.

Alternative Fuel Vehicle Manufacturer Tax Credit: The bill provides that the term "alternative fuel" includes biodiesel and diesel fuel for purposes of the Hoosier alternative fuel vehicle manufacturer tax credit.

Slot Machine Revenue Reallocation: This bill reallocates a portion of the slot machine revenues distributed for thoroughbred purposes by decreasing money primarily used for purses and increasing money for the breed development fund. It also establishes an interim study committee on horse racing.

Foresters: This bill requires the State Personnel Department to reclassify the job category and skill level applying to district foresters retroactive to July 1, 2008. It provides that district foresters are entitled to back pay for 2008-2009. The bill also repeals a 2008 noncode provision concerning district foresters.

Economic Improvement Districts: The bill provides that property tax exempt properties in an economic improvement district may be subject to special assessments. It specifies that the board for a district consisting of only one property owner must include the property owner. The bill clarifies the status of assessments for purposes of the Internal Revenue Code. It authorizes bonding for an economic improvement project. This bill provides that taxing units expecting to receive an economic benefit from an economic improvement district project may pledge special assessments and other legally available funds for the repayment of bonds or lease rentals for certain projects. It also specifies that the pledge does not create debt for the taxing unit.

Abatements: This bill provides that a determination to establish an economic revitalization area after June 30, 2009, by a designating body in a county containing a consolidated city must be approved or rejected by the county fiscal body if the designating body's resolution awards a deduction for the redevelopment or rehabilitation of real property.

Distressed Unit Appeals: This bill requires the Distressed Unit Appeal Board to make a determination concerning a petition for relief from the circuit breaker law within 30 days after a petition is filed. The bill permits an extension of the period if both the board and the fiscal body submitting the petition agree to the extension. It also provides for approval of petitions pending before the board.

Late Payment Penalties: This bill provides that for property taxes first due and payable in 2009 there is no penalty for a late payment of taxes if the taxes are paid within 30 days after the due date.

Communications Equipment Sales Tax Exemption: This bill extends the sales tax exemption available in current law for purchase of certain communications equipment to a person that furnishes cable or satellite television services, cable or satellite radio services, or Internet access services.

Certified Technology Park Revenue Guarantee: This bill provides for a supplemental distribution to a certified technology park in which a business ceases to operate after the establishment of the certified technology park.

Westfield: Provides that the city of Westfield may establish a professional sports and convention development area before January 1, 2010.

Professional Sports Areas: This bill extends the statute governing professional sports and conventional development areas for cities or counties outside Marion county to December 31, 2041.

Effective Date: January 1, 2008 (Retroactive); July 1, 2008 (Retroactive); January 1, 2009 (Retroactive); Upon Passage; July 1, 2009.

Explanation of State Expenditures: (Revised) *Certified Technology Park (CTP) Revenue Guarantee:* The bill provides for appropriations from the state General Fund to CTPs to replace incremental income and sales tax revenue attributable to a business or businesses that cease to operate in a CTP. The replacement appropriations would be made for five fiscal years following the last full fiscal year during which the business operated in the CTP. The appropriation could potentially begin in FY 2010. The potential annual expenditure by the state for CTP revenue replacement is indeterminable but could be substantial as there are 19 certified technology parks currently operating in the state. In addition, the departure of Delco-Remy from the Anderson (Flagship) CTP could require replacement appropriations beginning in FY 2010.

Department of State Revenue (DOR): This bill could increase the administrative costs of the DOR. The DOR will have to amend tax forms, as well as update computer software. It is estimated that the provisions of this bill could be implemented within the existing level of resources available to the DOR.

Foresters: This provision would increase expenditures to the DNR by an estimated $165,000 with $127,000 in back pay and $38,000 remaining in FY09. This personnel expense would be paid from the main operating account of the Division of Forestry. This account is 1/3 general fund and 2/3 dedicated.

Explanation of State Revenues: (Revised) *Aircraft Sales Tax Exemption*: This bill provides that an aircraft is exempt from Sales Tax if the gross lease revenue derived from leasing or rental of the aircraft is equal to or greater than the book value of the aircraft; or 7.5% of the greater of the book value of the aircraft or the net acquisition price of the aircraft

Under current statute, an aircraft is exempt from Sales Tax if the amount of lease revenue is equal to or greater than 10% of the original cost or the book value of the aircraft; or 7.5% of the original cost or book value of the aircraft if the value of the aircraft is at least $1,000,000.

The bill also provides that the DOR may not assess sales tax if a person does not meet the revenue threshold because of certain conditions outlined in the bill. These provisions could have an indeterminable impact on Sales Tax revenue.

Communications Equipment Sales Tax Exemption: This bill provides that the following are exempt from Sales Tax;

- certain property acquired by a person that furnishes cable television or radio service or satellite television or radio services and uses the property to provide telecommunications service; and
- personal property that is part of a national, regional or local headend or similar facility operated by a person furnishing cable television services, cable radio services, satellite television or radio service or internet access services.

The estimated impact of these provisions is indeterminable but could be significant. Sales Tax revenue is deposited in the state General Fund (99.178%), the Public Mass Transportation Fund (0.670%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%).

Alternative Fuel Vehicle Manufacturer Tax Credit: The bill extends qualification for the tax credit to a manufacturer of a vehicle that operates on biodiesel or diesel fuel. This provision expands the potential pool of applicants for the tax credit, however, the fiscal impact of the expansion is indeterminable and would depend on IEDC actions to award the tax credit.

Slot Machine Revenue Reallocation: The bill changes the required allocation of racetrack slot machine adjusted gross receipts (AGR) for thoroughbred purposes only. Of the total receipts directed to thoroughbred purposes, the bill decreases from 60% to 40% the share allocated to thoroughbred purses and horsemen's associations and provides for a compensating increase in the share allocated to thoroughbred breed development fund established under current statute. The change is effective January 1, 2009. The bill could potentially increase the amount allocated to the thoroughbred breed development fund by at least $4.8 M in 2009 and 2010, with allocations to thoroughbred purses and horsemen's associations decreased by that amount. The impact of the allocation change would grow in future years with growth in slot machine AGR.

(Revised) *Professional Sports Development Areas (PSDAs):* The bill makes three changes to current statute governing PSDAs excluding the PSDA in Marion County. The bill allows:

(1) Westfield to establish a PSDA expiring in 2040;
(2) existing PSDAs in Allen County, Evansville, Huntingburg, and South Bend to change the PSDA or revise the terms governing the PSDA; and
(3) existing PSDAs in Allen County, Evansville, Huntingburg, and South Bend to extend their expiration from 2027 to 2040.

The Westfield PSDA capture limit would be 50% of the state revenue (state individual income tax and state sales tax) generated in the PSDA for each state fiscal year during its existence. The potential impact on state tax revenue from a PSDA in Westfield is indeterminable.

The other provisions in the bill would allow existing PSDAs other than in Marion County to be changed and the lifetime of each to be extended by 13 years. This could potentially increase the state revenue captured overtime by the existing PSDAs. However, the precise fiscal impact to the state is indeterminable and would depend on the current performance of these PSDAs and any changes that may be made to them.

<u>Background Information</u>: *Aircraft Sales Tax Exemption* - Under current statute, a transaction in which a person acquires an aircraft for rental or leasing in the ordinary course of the person's business is not exempt from sales tax unless the person establishes under guidelines adopted by the DOR that the annual amount of the gross lease revenue derived from leasing or rental of the aircraft is equal to or greater than:
(1) 10% of the greater of the original cost or the book value of the aircraft, if the original cost of the aircraft was less than $1,000,000;
(2) 7.5% of the greater of the original cost or the book value of the aircraft, if the original cost of the aircraft was at least $1,000,000.
If the DOR determines that the gross lease revenue derived from leasing or rental of the aircraft in the previous year does not meet the revenue threshold, the person is required to pay the Sales Tax in the current year.

Sales Tax revenue is deposited in the state General Fund (99.178%), the Public Mass Transportation Fund (0.670%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%) .

Alternative Fuel Vehicle Manufacturer Tax Credit - Current statute provides for a non-refundable tax credit against the Individual or Corporate AGI Tax, Financial Institutions Tax, or Insurance Premiums Tax liability of taxpayers who make qualified investment in infrastructure, facilities, machinery, and equipment in Indiana to manufacture or assemble alternative fuel vehicles. An "alternative fuel vehicle" is a vehicle designed to operate on at least one of the following fuels: methanol, denatured ethanol, and other alcohols; mixtures containing 85% methanol, denatured ethanol, and other alcohols with gasoline or other fuel; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; non-alcohol fuels derived from biological material; P-Series fuels; or electricity. The tax credit must be determined by the Indiana Economic Development Corporation (IEDC), with a maximum allowable tax credit of 15% of the qualified investment. Current statute allows the IEDC to award the tax credit for investment made between 2007 and 2012. The excess credit amounts may be carried for up to nine years.

Slot Machine Revenue Reallocation - Under current statute, Hoosier Park and Indiana Downs are each required to set aside for various purposes 15% of the AGR generated by the slot machine facilities at the racetracks. It is estimated that the 15% set aside could potentially total at least $54 M in 2009 and 2010. After each racetrack allocates $250,000 annually to the State Gaming Integrity Fund, 97% of the remainder is divided between thoroughbred, standardbred, and quarter horse purposes. Of this total, thoroughbred purposes receive a 46% share, with 60% allocated to thoroughbred purses and horseman's associations and 40% allocated to thoroughbred breed development funds.

Professional Sports Development Areas (PSDAs): Under current law, a PSDA is a special zone in which certain state and local tax revenues earned in the area are diverted and deposited into a special fund. This fund is dedicated to capital improvement in the development area. Currently, PSDAs are operated by Marion County, Allen County, Evansville, Huntingburg, and South Bend. The PSDAs are able to capture incremental revenue from the state individual income tax, state sales tax, county option income tax, and food and beverage tax (except in Allen County).

Except in Marion County, PSDAs may annually capture state income and sales tax revenue up to $5 per resident of the establishing local unit. In FY 2008, the Allen County PSDA captured $1.66 M in state revenue which is its capture limit. In FY 2008, South Bend captured $428,449, Evansville captured $459,975 (both less than their capture limits), and Huntingburg did not capture any state revenue.

Explanation of Local Expenditures:

Explanation of Local Revenues: (Revised) *Enterprise IT Exemption:* Under this bill, a county or municipal fiscal body could grant a property tax exemption for new enterprise information technology equipment owned by an eligible business. If the property is located within a municipality, then the municipal fiscal body would be the designating body. The county fiscal body would be the designating body for property located in an unincorporated area. The designating body could adopt a resolution through December 31, 2012, to exempt property. The term of the exemption, however, could extend beyond 2012 and would have to be set in an agreement between the designating body and eligible business. The designating body would be required to give notice of the resolution and must hear all remonstrances and objections. A final resolution would be adopted after the hearing.

The granting of any exemption under this bill would be a local decision and would be limited to new investments made after June 30, 2009. The exemption of newly acquired property would not affect the existing tax base. If there is an increase in development because of the exemption, then other property could be added to the tax base. If the exemption period set locally is shorter than the life of the property, then the value of the enterprise information technology equipment could eventually be added to the tax base. However, if one assumes that the investment would be made with or without the exemption, then the granting of the exemption under this bill could also eliminate the normal shift of the property tax burden from all taxpayers to the owners of the new property that would have occurred.

Economic Improvement Districts: Under current law, an economic improvement district (EID) may be formed by a county or municipality if a petition is signed by (1) a majority of the real property owners in the proposed district; <u>and</u> (2) the owners of at least 2/3 of the non-exempt assessed value in the proposed district. All real property owners in an EID, except those entities that are exempt from property taxation, must pay a special assessment that is used to fund improvements in the district. The district may also exempt for one year a business that is established after creation of the district.

Currently, EID projects may include the following:

1) Planning or managing development or improvement activities;
2) Designing, landscaping, beautifying, constructing, or maintaining public areas;
3) Promoting commercial activity or public events;
4) Supporting business recruitment and development;
5) Providing security for public areas;
6) Acquiring, constructing, or maintaining parking facilities; and
7) Constructing, rehabilitating, or repairing residential property.

Under this bill, EID projects could also include <u>development</u> of residential property, and other economic development and redevelopment projects. For purposes of projects involving residential property, residential property would be redefined as <u>public and private</u> residential property.

This bill would subject otherwise tax exempt property in the EID to the special assessments. In addition, the bill would permit a taxing unit to pledge the special assessments from an EID and any other available funds for the payment of debt without creating an obligation for the taxing unit.

(Revised) *Professional Sports Development Areas (PSDAs):* See Explanation of State Revenues. The provisions of the bill could potentially allow for additional capture by PSDAs other than the Marion County PSDA of county option income tax revenue and food and beverage tax revenue.

Distressed Unit Appeals: Under current law, a taxing unit that expects to lose at least 5% of property tax revenue in a year to the circuit breaker may petition the Distressed Unit Appeals Board for relief. The petition must include a proposed financial plan that includes the following:

1) Proposed budgets;
2) Proposed efficiencies, consolidations, cost reductions, and uses of alternative or additional revenues;
3) Proposed increases, if any, in the circuit breaker percentage thresholds; and
4) Proposed reductions, if any, to the credits by percentages, including any varying percentage reductions for different classes of property.

The board must review the petition and may grant relief.

This bill would require the board to make a written determination within 30 days of the petition. The fiscal body of the distressed unit may request one 30 day extension for the board to make its determination. If the board fails to make a timely determination, then the relief sought by the taxing unit would be automatically granted.

There is one petition currently pending before the board. Under this provision, the distressed unit would be entitled to the relief requested on the effective date of the provision (upon passage.)

Late Payment Penalties: Under current law, if a property tax installment is paid with 30 days after the due date, then the delinquent amount is subject to a 5% penalty. If the installment is more than 30 days late or if a previous installment is still outstanding, then a 10% penalty applies.

Under this provision, for taxes due on a homestead in 2009 only , the 5% penalty would be waived if the payment is made with 30 days after the due date and there are no previous installments outstanding. This provision would result in a loss of revenue from penalties on accounts less than 30 days old. The waiver of the penalty could encourage more taxpayers to pay 30 days late. However, it could also encourage taxpayers who might otherwise go beyond the 30 days to stay within the 30 day window.

Sales Tax Exemptions: Local revenues will be impacted to the extent that a local unit receives funds from the Public Mass Transportation Fund, the Commuter Rail Service Fund, or the Industrial Rail Service Fund.

State Agencies Affected: Department of State Revenue; Indiana Economic Development Corporation.

Local Agencies Affected: County and municipal fiscal bodies; County auditors; Local taxing units and school corporations; certified technology parks; professional sports development areas.

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